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Supreme Court, U.S.
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No. 99-1434

IN THE

Supreme Court of the United States

UNITED STATES OF AMERICA,

Petitioner,

v.

THE MEAD CORPORATION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

RESPONDENT'S SUPPLEMENTAL BRIEF

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STATEMENT PURSUANT TO RULE 29.6

The Mead Corporation has no parent company and there is no publicly held company which owns 10% or more of The Mead Corporation's stock.

INTRODUCTION

Mead submits this Supplemental Brief pursuant to Supreme Court Rule 15.8 for the purpose of clarifying the import of the Court's holding in *Christensen v. Harris County*, No. 98-1167, 2000 WL 504578 (U.S. May 1, 2000), which was handed down one business day after Mead had filed its Brief in Opposition to the Petition for a Writ of Certiorari. *Christensen* is a straightforward decision on judicial deference to administrative interpretations that endorses the Federal Circuit holding for which Petitioner has sought review, but Petitioner's mischaracterization of that decision in its Reply Brief ("Reply" or "Rep. Br.") compels the submission of this Supplemental Brief.

ARGUMENT

In *Christensen*, the Court addressed whether an opinion letter issued by the United States Department of Labor was entitled to deference under *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). The Court held that it was not:

> Here . . . we confront an interpretation contained in an opinion letter, not one arrived at after, for example, a formal adjudication or notice-and-comment rulemaking. Interpretations such as those in opinion letters — like interpretations contained in policy statements, agency manuals, and enforcement guidelines, all of which lack the force of law — do not warrant *Chevron*-style deference.

Christensen, 2000 WL 504578, at *6.

This holding speaks directly to the instant Petition. As established in Mead's Brief in Opposition ("Opp. Br."), the classification ruling for which Customs seeks *Chevron* deference was not "arrived at after . . . a formal adjudication or notice-and-comment rulemaking." *Id.* Like the opinion letter, policy statements, agency manuals and enforcement guidelines discussed in *Christensen*, Customs classifications rulings do not warrant *Chevron* deference.

Petitioner misstates the holding of *Christensen*, claiming that this Court found *Chevron* deference unwarranted because the Department of Labor opinion letter was "issued in a format . . . that Congress has not authorized for that purpose." Rep. Br. at 3 (quotations omitted). This interpretation of the Court's holding is inventive, but plainly wrong. There is no support in *Christensen* for the theory that the dispositive factor in denying *Chevron* deference is the *format* of the agency interpretation rather than the absence of "formal adjudication or notice-and-comment rulemaking." *Christensen*, 2000 WL 504578, at *6.

To the extent that Customs seeks support in *Christensen* for urging a lesser standard of deference than that specified in *Chevron*, this argument, too, misses the point. The Federal Circuit held below that Customs classification rulings were not entitled to *Chevron* deference; it did not address the availability of a lesser deference standard because Customs did not seek such deference. The consideration of a lesser standard, waived in the lower courts, cannot be raised initially before this Court. *See* Opp. Br. at 13-15.

Contrary to Petitioner's arguments, *Christensen* makes clear that *Chevron* deference is inappropriate for Customs classification rulings, and consequently supports the Federal Circuit's holding. In view of *Christensen*, it is respectfully submitted that the Federal Circuit's decision below should be summarily affirmed.

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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